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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 BRANDI PASSANTE,

11 Plaintiff,

12 vs.

13 HUNTER MOORE and JOHN DOES 1-25,

14 Defendants.

SACV12-01866 JVS (ANx)

Case No.:

15 **PLAINTIFF'S *EX PARTE* MOTION
16 FOR TEMPORARY RESTRAINING
17 ORDER; ORDER TO SHOW CAUSE
18 RE:PRELIMINARY INJUNCTION,
19 AND ORDER OF IMPOUNDMENT;
20 MEMORANDUM OF POINTS AND
21 AUTHORITIES IN SUPPORT**

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Statutes

1 15 U.S.C. § 1125(a), 4

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5 Federal Rule of Civil Procedure 65 (c) 8

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **VII. INTRODUCTION**

3 Defendant Hunter Moore's ("Moore") success is predicated on his "revenge porn"

4 websites. Defendant brings visitors to his websites by posting naked images, videos with sexual

5 content, and other illicit material, most frequently without the individuals-depicted's knowledge

6 or consent. Moore than uses these sites to promote bookings for appearances, selling "Hunter

7 Moore" merchandise such as hats, t-shirts, and accessories featuring his name, slogans, and

8 various images associated with his websites, and his music. By his own admission he has

9 received countless cease and desist letters, but simply ignores them. Declaration of Cassandra

10 Meyer In Support of *Ex Parte* Application for Temporary Restraining Order; Order to Show

11 Cause Re: Preliminary Injunction, And Order of Impoundment; Memorandum of Points and

12 Authorities in Support ("Meyer Decl.") ¶5, Ex. A. On or about October 14, 2012, Moore posted

13 suggestive images of an individual claiming to be Brandi Passante and offered the pornographic

14 video from which the images were taken to anyone who wanted to view the video. Declaration of

15 Brandi Passante In Support of *Ex Parte* Application for Temporary Restraining Order; Order to

16 Show Cause Re: Preliminary Injunction, And Order of Impoundment; Memorandum of Points

17 and Authorities in Support ("Passante Decl.") ¶6, Ex. B. Subsequent to this initial posting the

18 video appeared on fleshbot.com where unsuspecting viewers' computers are infected with a virus

19 upon pressing the "play" icon. Declaration of Stephen A. Kennedy In Support of *Ex Parte*

20 Application for Temporary Restraining Order; Order to Show Cause Re: Preliminary Injunction,

21 And Order of Impoundment; Memorandum of Points and Authorities in Support ("Kennedy

22 Decl.") ¶4, Ex. C. Plaintiff Passante who is a celebrity and is not the woman in the video, moves

23 *ex parte* for a temporary restraining order to put an immediate halt to the ongoing distribution of

24

1 the images and video, in order to avoid irreparable harm to her reputation as well as to the
2 unsuspecting public who attempt to view the video and instead are attacked by a computer virus.

3 VIII. MATERIAL FACTS

4 a. Plaintiff is a Celebrity

5 Passante is a regular on the A&E Network's show *Storage Wars*. Passante Decl. at ¶2. As
6 a result of her participation in the show, she has achieved notoriety and become a worldwide
7 celebrity. Passante Decl. at ¶2. Passante's name and likeness are used in promotion of the show,
8 on marketing materials and on promotional items, such as mugs, t-shirts, hats, etc., available
9 through A&E's distribution channels. Passante Decl. at ¶3. Consequently Passante has
10 commercial interests in her identity and she makes an effort to protect those interests. Passante
11 Decl. at ¶3-4.

12 b. Plaintiff Discovers Defamatory and Offensive Web Content.

13 On or about October 14, 2012 Passante began to receive unsolicited posts on her Twitter
14 account stating "Can't wait to see more of the video," "Love the pics," and similar references to
15 images posted at <is-anyone-up.tumblr.com>. Passante Decl. at ¶6. At that time, she did not
16 know what videos or images the posts were referring to. Passante Decl. at ¶6. Passante looked at
17 the referenced website and was horrified, hurt and ashamed to see images of someone portraying
18 her in a pornographic video and associated images. Passante Decl. at ¶7. Passante never made
19 any such video, has never had any contact with Mr. Moore and did not send him sexual images;
20 Moore fabricated the video for the purpose of trading on Passante's fame and celebrity to draw
21 traffic to his site. Passante Decl. at ¶8-9. After learning of these posts, and the subsequent re-
22 posting of the full video on one or more separate websites, Passante has experienced anxiety,
23 loss of sleep and physical illness as a direct and proximate result of Moore's conduct. Passante
24

1 knows that such false exposure will eventually reach her children, their friends and their friends'
2 families. Passante Decl. at ¶10.

3 **c. Defendant Willfully Posted Defamatory Content to Exploit Plaintiff's**
4 **Celebrity**

5 Moore is on record for actively defying the Lanham Act and other individuals' publicity
6 rights, stating "I'm not a virgin to cease and desists—I get about a million a day... I don't give a
7 fuck. I'm never going to stop" and brags that he replies to such demand letters "with a picture of
8 [his] dick." Meyer Decl. at ¶5. On or about October 14, 2012, Moore posted images of a female
9 whom he falsely represents is "brandie from storage wars fingering herself for me" [sic].
10 Passante Decl. at 7. Below the images, Moore asks if anyone wants the video, thereby trading on
11 Passante's celebrity, willfully offering to disseminate the videos and photos to third parties, and
12 disseminating defamatory content to those who requested same. On or about October 16, 2012
13 Moore posted, or caused to be posted, the video at fleshbot.com, a site known for hosting
14 pornography. If viewers click the "play" icon to view the video, a virus immediately begins to
15 infect those users' computers not protected by sophisticated anti-virus software. Kennedy Decl.
16 at ¶4. Moore uses Passante's name and likeness to lure the public to his websites in an attempt to
17 grow his infamy, profiting from appearances, marketing and advertising on his website and to
18 disseminate the virus contained in the fleshbot.com posting. Moore profits from these activities
19 by accepting bookings for appearances and selling "Hunter Moore" merchandise such as hats, t-
20 shirts, and accessories featuring his name, slogans, and various images associated with his
21 websites. Moore also uses the Tumblr website to promote and sell his music both through
22 postings and links to his band website where his recordings can be purchased. Moore states on
23 the Tumblr site that he will be posting the video at <Huntermoore.tv>. Moore posted the video
24 knowing that the images were not of Passante and did so maliciously, and with reckless disregard

1 to Passante's reputation, privacy, and well-being. He did so with the false and fraudulent intent
 2 to mislead the public into believing he was somehow affiliated with Passante. If the damaging
 3 content is not immediately removed Passante will suffer irreparable injury both personally and
 4 professionally.

5 **IX. A TEMPORARY RESTRAINING ORDER IS NECESSARY TO PREVENT VIOLATIONS OF THE**
 6 **LANHAM ACT**

7 To obtain a temporary restraining order and/or a preliminary injunction in the Ninth Circuit,
 8 Plaintiff must show: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm
 9 absent a preliminary injunction; (3) that the balance of equities tips in favor of issuing an
 10 injunction; and (4) that an injunction is in the public interest. *State of Alaska v. Native Village of*
 11 *Venetie*, 856 F.2d 1384, 1389 (9th Cir. 1988); *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S.
 12 7, 129 S.Ct. 365, 374 (2008). A preliminary injunction is intended to preserve the status quo and
 13 prevent irreparable loss of rights before judgment. *See, e.g., Textile Unlimited, Inc. v. A. BMH &*
 14 *Co.*, 240 F.3d 781, 786 (9th Cir. 2001); *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d
 15 1415, 1422 (9th Cir. 1984). Because there is no adequate remedy at law, injunctive relief is the
 16 "remedy of choice" in trademark cases. *Century 21 Real Estate Corp. v. Sandlin*, 846 F.2d 1175,
 17 1180 (9th Cir. Cal. 1988).

18 **a. Plaintiff has Demonstrated a Likelihood of Success on the Merits of**
Her Claims.

19 **i. Defendant Violated 15 U.S.C. § 1125(a) - False Designation of Origin**

20 Passante's claim for false designation of origin arises under Section 43(a) of the
 21 Lanham Act, 15 U.S.C. § 1125(a), which provides in part:

22 Any person who, on or in connection with any goods or services
 23 ... uses in commerce any word, term, name, ... or any false
 24 designation of origin, false or misleading description of fact, or
 false or misleading representation of fact, which

1 (A) is likely to cause confusion, or to cause mistake, or to
2 deceive as to the affiliation, connection, or association of such
3 person with another person, or as to the origin, sponsorship, or
approval of his or her goods, services, or commercial activities
by another person....

4 shall be liable in a civil action by any such person who believes
5 that he or she is or is likely to be damaged by such act.

6 Moore used Passante's name and likeness in commerce in connection with two images
7 and a salacious video. Moore falsely claims the video originated with Passante and was created
8 for him. Moore's statements were made with malice, are false, fraudulent and misleading,
9 intended to deceive the public into believing that Passante participated in, condoned, and/or
10 authorized the publication of the video and/or is in some way affiliated with Moore, thereby
11 driving web traffic and increased notoriety to Moore's illicit website. The video disseminated by
12 Moore not only contains images that disparage Passante, but also contains a virus that is released
13 when viewers attempt to watch the video. Passante has suffered emotional, physical and
14 psychological damage, including damage to her personal and professional reputation. As a direct
15 and proximate result of Moore's actions, Passante has suffered damages that are incalculable.

16 **ii. Defendant Violated 15 U.S.C. § 1125(c) - Dilution Through**
17 **Tarnishment**

18 Passante, as a celebrity with a right to publicity, is entitled to injunctive relief under the
19 Lanham Act if she can show another person who, at any time after her mark became famous,
20 commences use of a trade name in commerce that is likely to cause dilution by tarnishment of
21 the famous mark, regardless of the presence or absence of actual or likely confusion, of
22 competition, or of actual economic injury. 15 U.S.C. § 1125(c)

23 Passante is a famous celebrity and thus has a protectable right to publicity. Furthermore,
24 her image is widely recognized in association with the *Storage Wars* brand. Two years after

1 Passante achieved fame on *Storage Wars*, and as a direct consequence of her celebrity, Moore
 2 posted pornographic images and a pornographic video, attributing them to Passante. The
 3 pornographic nature of the images and associated video tarnish Passante's reputation, celebrity
 4 and brand by their very nature, as they allege she has taken part in immoral, lascivious acts.
 5 Moore's use of Passante's name and likeness are commercial use as they are intended to
 6 misdirect traffic to his many websites to further his infamy and lead to sales of his merchandise
 7 and music, which can be purchased through links on the websites where the images appear. As a
 8 result of Moore's tarnishment to her image, Plaintiff is entitled to equitable relief in the form of
 9 injunctive relief.

10 **iii. Plaintiff Has Demonstrated a Likelihood of Success on Her Consumer**
 11 **Fraud Claim**

12 To prevail on a consumer fraud claim Plaintiff must show (1) misrepresentation of a
 13 material fact (consisting of false representation, concealment or nondisclosure); (2) knowledge of
 14 falsity (scienter); (3) intent to deceive and induce reliance; (4) justifiable reliance on the
 15 misrepresentation; and (5) resulting damage. *Jessica Bower v. AT&T Mobility, LLC*, et al., 196
 16 Cal. App. 4th 1545; 127 Cal. Rptr. 3d 569; 2011 Cal. App. LEXIS 85.

17 Moore misrepresented a material fact consisting of the false representation that the
 18 female appearing in the images and video posted on his websites was Passante. Moore knew that
 19 his claims were false. Moore's false statements are intended to deceive the public into believing
 20 that Passante participated in, condoned, and/or authorized the publication of the video or is in
 21 some way affiliated with Moore, thereby bringing web traffic and increased notoriety to Moore's
 22 illicit web site. Followers of Moore justifiably rely on the misrepresentation; the viewers accept
 23 the representation as made and are led to believe that they are seeing images of a well-known
 24 celebrity. The false claims result in damage because of the spread of the computer virus which

1 downloads when individuals lured to the website click on the “play” icon. As a direct and
 2 proximate result of Moore’s actions, Passante has suffered incalculable damages and irreparable
 3 harm.

4 **b. Absent Injunctive Relief Plaintiff Will Suffer Irreparable Injury**

5 To obtain injunctive relief Plaintiff must show she will suffer irreparable harm as a
 6 consequence of Defendant’s actions. *Winter v. Natural Res. Def. Council, Inc.* at 22. Defendant
 7 damages Plaintiff’s professional reputation by attributing lack of chastity and immoral acts to
 8 Passante when he falsely claims the woman in the pornographic video is Plaintiff. Damage to
 9 one’s professional reputation constitutes irreparable injury as one cannot be made whole by
 10 financial recompense. *Id.* Passante faces imminent harm as Moore has a long history of posting
 11 illegal, immoral content, and a blatant, widely publicized refusal to remove that content, even in
 12 the face of cease and desist letters, take down demands, and lawsuits. Because it is electronic
 13 media, if Moore is forced to shut down one website, he will, in all likelihood, subsequently
 14 establish new websites. By issuing an order requiring him to remove the content currently online,
 15 and enjoining him from further publication of the video and images, any new publication will
 16 constitute contempt of court.

17 **c. The Balance of Hardships Strongly Favors Plaintiff**

18 In assessing whether the balance of hardships tips in favor of Plaintiff or Defendant, the
 19 Court must “balance the interests of all parties and weigh the damage to each.” *Video Gaming*
 20 *Techs., Inc. v. Bureau of Gambling Control*, 356 Fed. Appx. 89, 93 (9th Cir. Cal. 2009), 2009
 21 U.S. App. LEXIS 26845, 7 citing *L.A. Mem’l Coliseum Comm’n v. Nat’l Football League*, 634
 22 F.2d 1197, 1203 (9th Cir. 1980). Moore’s actions will continue to cause great and irreparable
 23 injury to Passante in that such conduct, among other things, may result in permanent damage to
 24 her reputation and jeopardize her standing and goodwill with her existing and future producers,

1 directors and broadcasting networks. The harm to Passante in particular due to the damage to her
 2 reputation, and to the public in general as a consequence of the computer virus, far outweighs
 3 any harm that may result to Moore, if the TRO issues. At worst, Defendant will be forced to
 4 remove illegal content from his website.

5 **d. The Public Interest Strongly Favors Granting Plaintiff Injunctive Relief**

6 If the TRO does not issue Passante will be irreparably harmed because she cannot be
 7 made whole through monetary damages. Moreover, by allowing the video to remain online the
 8 public is at risk for the associated computer virus. Defendant Moore's behavior is an ongoing
 9 threat not only to Plaintiff who has no association with Defendant, but also to innocent
 10 individuals whose only mistake is to trust the wrong sexual partner or risk sexual congress with
 11 Moore himself whereupon they may find their intimate moments published online for the world
 12 to view. For those who rely on Moore's salacious posts the risk of a computer virus is very real
 13 and ongoing. Consequently, the public interest weighs in favor of injunctive relief.

14 **X. PLAINTIFF HAS COMPLIED WITH THE PROCEDURAL REQUIREMENTS FOR ISSUANCE**
 15 **OF A TRO AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION**

16 Plaintiff has complied with Fed. R. Civ. P. 65 and Local Rule 65-1 for issuance of an *ex*
 17 *parte* TRO and an Order to Show Cause why a preliminary injunction should not issue. Plaintiff
 18 has submitted evidence showing she will be irreparably harmed without an Order restraining
 19 Defendant from any further distribution of the images, video, and associated computer virus.

20 Federal Rule of Civil Procedure 65 (c) provides that a bond be posted "in an amount that
 21 the court considers proper to pay the costs and damages sustained by any party found to have
 22 been wrongfully enjoined or restrained." Such bond "may not be required, or may be minimal,
 23 when the harm to the enjoined party is slight or where the movant has demonstrated a likelihood
 24 of success." *Ticketmaster L.L.C. v. RMG Techs., Inc.*, 507 F. Supp. 2d 1096, 1116 (C.D. Cal.

2007). Should this Court determine that Passante must post a bond to comply with the statute, a minimal bond will be sufficient. As discussed above, Defendant has no legitimate business interests in falsely claiming Passante is the woman in the video and images. Further, Defendant's losses from being unable to defraud the public and defame Passante are *de minimus*. Accordingly, Plaintiff proposes that if a bond is necessary, it be set in the amount of \$1,000.00.

XI. AN ORDER OF IMPOUNDMENT TO PREVENT FURTHER DAMAGE IS WARRANTED

The same standards that apply to a TRO and preliminary injunction apply to the issuance of an impoundment. *Dish Network LLC v. Sonicview USA, Inc.*, 2009 U.S. Dist. LEXIS 63429, 5, 2009 WL 2224596; *Yamate USA Corp. v. Sugerman*, 1991 U.S. Dist. LEXIS 20701, 41-42, 1991 WL 274854, at 14 (D.N.J. 1991). To obtain an *ex parte* impoundment order, Plaintiff must establish that Defendant is likely to ignore court orders or destroy evidence if given notice of the litigation. *Dish Network LLC* at 2. In *Dish Network LLC*, the Court denied Plaintiff's request for impoundment where Plaintiff failed to produce evidence that the Defendant would either ignore court orders or destroy its infringing hardware and software. Conversely, here the Defendant has blatantly flouted the law by continuing to post illegal, immoral, prurient content in spite of cease and desist letters, law suits, FBI investigations, and being banned from Facebook. Moreover, he has publicly stated that he is not fazed by cease and desist letters and will not comply with one. In fact, Moore defies those whose rights he violates to pursue available legal remedies stating, "It takes you \$50,000 to get me into court, and people who work at Starbucks don't make that kind of money." Meyer Decl. at ¶8.

Further, the Court has found impoundment proper when the Defendant proceeded with publication of infringing material, after being informed of the possible infringement. *Momento, Inc. v. Seccion Amarilla USA*, 2009 U.S. Dist. LEXIS 62664, 13-14, 2009 WL 1974798. Here, when Defendant posted the video claiming the woman was Plaintiff and that Plaintiff had made

the video for him, he knew his statements were false and misleading. He knew he was tarnishing her reputation and was indifferent as to the consequences. In spite of his prior knowledge that his actions were illegal and immoral he posted the video anyway. Additionally, after Moore received the cease and desist letter he responded by posting a Tweet to Plaintiff Passante stating "thank you for the cease and desist." He then reposted the images on Twitter and yfrog. Declaration of Linda S. McAleer In Support of *Ex Parte* Application for Temporary Restraining Order; Order to Show Cause Re: Preliminary Injunction, And Order of Impoundment; Memorandum of Points and Authorities in Support ("McAleer Decl.") ¶17, Ex. D. Defendant has failed to comply with the cease and desist letter and has not responded to counsel for Plaintiff. McAleer Decl. at ¶20-24. The only way to prevent Defendant from continuing to post the offending video, images, and associate computer virus is to deny him access to the electronic files. Impoundment is a remedy specifically provided in copyright infringement actions and should be extended to cover cases where the conduct involves publication of images that infringe a celebrity's right of publicity. Impoundment is equally appropriate whether the matter concerns a celebrity's right to publicity or copyright because the purpose of legal protection is to preserve one's control over his or her intellectual property. *A&M Records v. Napster, Inc.*, 239 F.3d 1004, 1029; 2001 U.S. App. LEXIS 5446, 69.

XII. CONCLUSION

For the above reasons, Plaintiff respectfully requests that this Court grant the relief requested in the proposed Order submitted herewith.

Dated: October ____, 2012

Respectfully submitted,



Linda S. McAleer

Attorney for Plaintiff, Brandi Passante

EXHIBIT A

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9 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10 BRANDI PASSANTE

11 Plaintiff,

CASE NO.: _____

12 vs.

13 HUNTER MOORE, AN INDIVIDUAL, AND
14 DOES 1-25,

15 Defendants.
16

DECLARATION OF CASSANDRA MEYER
IN SUPPORT OF PLAINTIFF'S
APPLICATION FOR TEMPORARY
RESTRAINING ORDER; ORDER TO
SHOW CAUSE RE: PRELIMINARY
INJUNCTION; AND ORDER OF
IMPOUNDMENT

17 DECLARATION OF CASSANDRA MEYER

18 I, Cassandra Meyer, hereby declare under the penalties of perjury under the laws
19 of the United States of America, that the following is true and correct:

20 1. I have personal knowledge of the matters stated herein, and if called upon to testify I
21 could and would do so competently.

22 2. I am the assistant to Attorney McAleer, in the law offices of Linda S. McAleer.

23 3. On October 16, 2012 I researched the name Hunter Moore on google.com as part of
24 on-going research in this matter.

1 4. In the Google search, I found a reference to an article at Gawker.com. The article is
2 entitled, "Facebook Declares War on Sleazy Revenge Porn Site."

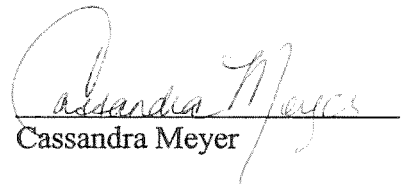
3 5. I read the article and found it to contain pertinent information regarding the
4 Defendant's past response to cease and desist letters.

5 6. I printed out the article from <gawker.com/5866506/facebook-declares-war-on-
6 sleazy-revenge-porn-site>. A true and correct copy of the article is attached as Exhibit 1.

7 7. Additionally, I found an article entitled, "Hunter Moore, Creator of 'Revenge Porn'
8 Website Is Anyone Up?, Is the Internet's Public Enemy No. 1." This article also contained
9 information relevant to Defendant's attitude toward individuals pursuing legal redress for his
10 actions.

11 8. I printed out the article from
12 <http://www.thedailybeast.com/articles/2012/03/13/hunter-moore-creator-of-revenge-porn-
13 website-is-anyone-up-is-the-internet-s-public-enemy-no-1.html>. A true and correct copy of the
14 article is attached as Exhibit 2.

15
16 Executed October 23, 2012 in San Diego County, California.

17
18 
19 Cassandra Meyer
20
21
22
23
24

10/18/12

Facebook Declares War On Sleazy Revenge Porn Site

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THURSDAY, OCT 18, 2012



Facebook Declares War On Sleazy Revenge Porn Site

Facebook is trying to shut down IsAnyoneUp.com, a sleazy porn site built around posting the Facebook profiles of its often-unwilling subjects. But the site's owner says he's not going anywhere.

Is Anyone Up (NSFW) has capitalized on a new genre of amateur erotica: Stalker porn. It features user-submitted nude cell phone pics, along with screenshots of the subjects' real Facebook profile. Many of Is Anyone Up's models are being exposed on the site without their consent, their private sexts submitted by vengeful exes.

Unsurprisingly, Is Anyone Up has now landed in Facebook's crosshairs. On Tuesday, Facebook's lawyers sent Moore a three-page Cease & Desist letter (PDF), demanding he remove all Facebook content. "Your actions are illegal and must be stopped immediately," the letter, from Joseph P. Cutler of the law firm Perkins Coie, states. (Cutler confirmed he sent the letter on behalf of Facebook, but wouldn't comment beyond that.)

"Facebook will take whatever measure it believes are necessary to enforce its rights, maintain the quality of the site, and protect its users," Cutler writes. Good luck with that.

"I replied with a picture of my dick," Hunter Moore, Is Anyone Up's 25-year-old founder and owner told us in a phone interview. "I'm not a virgin to cease and desists—I get about a million a day. I think [Facebook] is under

BY ADRIAN CHEN

DEC 8, 2011 7:04 PM

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TOMORROW'S NEWS



RO S 2,223
Which Romney Son Is Creepiest?



S 1,144
Ben Stein Tells Incredible Fox & Friends Hosts Taxes Are Too Damn Low



O O 1,301
Earning Money For Ruining Your Friend's Things, When Summer Love Turns to Autumn Scorn, And Other Questionable Advice



PP D 3,108
Mega Millions Jackpot Winner: My Girlfriend Just Dumped Me, 'Thank God'



D S 22,240
Too Small for Women: Amazon Flooded With Hilarious Reviews of Binders in Wake of Debate



SO W O 5,125
Doing Gay Porn Doesn't Make Reese Rideout Gay, But It Does Make His Wife Look Miserable



O 787
In Most Internet Story Ever, Boy with Down Syndrome Kept Warm by Puppies After Getting Lost in Woods



O 81
Doctors Shocked by Size of Sex Toy Stuck Inside Man's Intestines for Days



R 572
What Should We Re-Name Uma Thurman's Baby?



O 2012 9,581
Website Counting Down to 'October Surprise' Has the Internet Guessing [UPDATE x2]



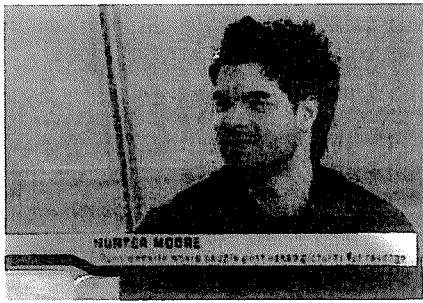
R 2,543
Billy Graham Bought a Whole

Exhibit 1

- 13 -

10/18/12

Facebook Declares War On Sleazy Revenge Porn Site



pressure from users to do something about me... I don't give a fuck. I'm never going to stop."

Facebook says Moore is violating some little-known policies prohibiting the publishing of Facebook profiles without their owners' written consent, and "threatening, harassing or intimidating" Facebook users. The letter demands that Moore remove all Facebook profiles and leave their users alone. Facebook

has disabled Moore's personal account to keep him from using the social network as his personal porn recruiting ground, and he says they somehow instantly squash the new ones he creates to check the accuracy of submissions, even though he uses fake names and hides his IP address.

The letter comes after a spate of national publicity which included local Fox News reports and Moore's appearance on Anderson Cooper's daytime talk show, where he was confronted by people whose lives have been screwed up by his site. Moore says *Is Anyone Up*'s traffic is now around 230,000 unique visitors a day, up from 160,000 at the time we wrote our first post about him last month.

As vile as Moore's site can be—one regular feature called "Daily Gnargoyle" makes fun of ugly submissions—it's hard to see how what Moore is doing is illegal, at least as Facebook frames it. (Kashmir Hill of *Forbes* has outlined the complicated legalities of *Is Anyone Up*.) We'd rather have Moore ruining unscrupulous sexters' lives than give Facebook's impenetrable terms-of-service the weight of law.

Then there's Mark Zuckerberg's own history of sketchily repurposing other people's pictures. In 2003, he famously launched *Facemash* while still a student at Harvard. The site let users vote on female students' attractiveness, without their consent.

Zuckerberg and Moore may soon have more in common than getting rich off violating everyone else's privacy. Moore says he's launching his own social network in January, which sounds like it's going to be an advanced version of the location-based dating app *Grindr*, but not just for gays.

"It's going to change the game, I guess," Moore said. "It's going to bring social networking back." Right, because Moore is definitely someone you should trust with your personal information.

Page in the *Wall Street Journal* to Tell You What He Thinks About Gays and Women



D S 1,091
Disney Declares Its Newest Princess Is Latina, Just So We Can All Fight About Whether Or Not She 'Looks Latina'



R SSR 7,034
Always Bet on Me: Mitt Romney's Order to the Bosses of Wage Slaves



FS 686
The Hagfish Strikes Again



O S O S O F 373
Boy Scouts of America's 'Perversion Files' Released



R W R 3,544
This Daring Baby Elephant Rescue Will Make You Weep Like a Baby Human



SSW R 2,430
Fancy Liberal Brooklyn Is Full of Hypocrites



S S D 15,633
Substitute Teacher Fired After Former Student Boasts About Affair Online, Posts Nude Photos to Prove It



RO 4,567
Tagg Romney Wanted to Punch Obama During Tuesday's Debate



W F 2,467
Meet the Woman Who Breastfeeds Her Dog Because She Can



R DD 7,430
Why the Violentacrez Story Isn't About Free Speech



SS O S 189
Boston Mayor Doesn't Want Free Vibrators Distributed, Apparently Hates Female Self-Tickling



SO W O 494
American Horror Story: Asylum Is Less Batshit Insane Than Its Predecessor



D 448
This Guy's Scalp Looks Like the Surface of a Brain



S R 2,065
Who Is This Nude Woman Posing for Subway Riders in the Vienna Underground? [NSFW]

Contact Adrian Chen:

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D S S O S

FEATURED ALL

Exhibit 1

10/18/12

Facebook Declares War On Sleazy Revenge Porn Site

Discussion now closed.



Old People Now Living in Sin Also



I_am_a_genius_I_mean...

08 Dec 2011 7:20 PM

I have a sneaky feeling Mr. Moore will feature in many more gawker posts to come...

promoted by Kern_Cerned



Kern_Cerned @I_am_a_genius_I_mean...

I'm surprised it took so long. I've been really curious to see what the Gawker community thinks of all this.



milkythighs @Kern_Cerned

I think his haircut is played out. Even Biz freaking Stone is rocking the sides-combed-forward and front-gelled-up look.

promoted by Kern_Cerned



Kern_Cerned @milkythighs

I didn't even know that the emo/scene look was still around until I started checking the site out.



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Silence Noisy
Neighbors by
Transmitting Your
Music to Their
Speakers



Deadspin NBA Shit
List: Anthony
Carter, The Quiet
Sinkhole Of Despair



Six Reviewers Are
Shaken, Not Stirred,
By 007 Legends



How Going From
Straight-Size to Plus-
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Changed One Model's
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You won't believe
who the new
American Horror
Story monsters are!



Why Nissan Built
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Exhibit 1

-15-

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Hunter Moore, Creator of 'Revenge Porn' Website Is Anyone Up?, Is the Internet's Public Enemy No. 1

Mar 13, 2012 6:35 PM EDT

Hunter Moore is the controversial founder of Is Anyone Up?—a 'revenge porn' site that features amateur nude photos, often posted by jilted exes. He's come under fire from Facebook, has been accused of hacking, and was even stabbed with a pen by an angry subject. Marlow Stern reports.

Print Email Comments Tweet 157 Like 629

Hunter Moore, creator of the "revenge porn" website Is Anyone Up?, is creeping me out.

It's 1 a.m. and we're at The Studio at Webster Hall—a murky, cellarlike venue in Manhattan's East Village—for Moore's 26th-birthday celebration. Electronic music is buzzing from the stage, mixing easily with the sounds of the tattoo parlor in the rear. A quartet of young women in body-hugging dresses undulates to the thumping bass, as Moore's beady eyes home in on his nubile prey.

"I've fucked most of the girls here," says Moore, extending his heavily tattooed arm towards the pack. "All of these girls are literally 17 years old," he says, chuckling. "I might go to jail tonight."

The website that's made Moore infamous is called Is Anyone Up? Only 13 months old, it already has 300,000 unique viewers a day, according to Moore, and just north of 188,000 according to Web-traffic analysis service Compete.com. The site operates like a quasi-moderated Internet forum for the broken-hearted. Users—often vengeful exes or bitter friends—anonously submit nude photos, some of which feature their subjects in lewd acts. Moore, or one of his minions, then uploads the photos and attaches a screengrab of the person's Facebook, Twitter, Tumblr, or LinkedIn account as an identifier. An offensive reaction, in the form of a still or animated .gif depicting a pop culture reference or Internet meme, is usually added at the end of a post. Every so often, Moore will share a lurid sex story to accompany the pictures. Moore says he receives 25 submissions on a "bad" day, 250 on a "good" one.

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Aziz Ansari Likens Marriage to Sweater Ownership

US WEEKLY
Photo: Megan Fox Models Skimpier Underwear While Four Months Pregnant

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iPad 3 Customers Screwed By Apple

HUFFINGTON POST POLITICS
Odds Jump For Obama After Big Performance

MOST POPULAR

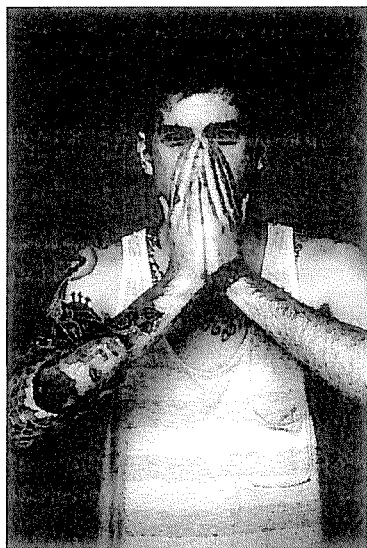
The Man Who Could Beat Bachmann

The President Who Would Be King

My Proof of Heaven

Exhibit 2

- 16 -



Courtesy of Hunter Moore

Few are safe from Moore's scorn. His site posts just as many men as women, and also includes the obese, who are branded either "SIF" (Secret Internet Fatty, a popular Web term indicating that the subject used creative angles to make themselves appear thinner) or "Gnargoyle" (denoting ugliness). While the majority of Moore's subjects are attractive 20-something "scene" kids with tattoos, the occasional middle-aged mom lands on the site and, in one case, a paraplegic. "A girl died in a car accident and these girls got pictures of her from the morgue with her brains falling out," Moore says. "They wanted me to post the pictures with her nudes. That was pretty disturbing. That's beyond people pointing and laughing; that's something you can't come back from." He pauses. "I don't want that on my conscience."

Is Anyone Up? has also gained a degree of notoriety for featuring many musicians—usually in the metalcore/emo scene—including band members from Brand New, Passion Pit, and Panic at the Disco! After the site posted nude photos of their bassist, Florida-based rock band A Day to Remember cancelled their set at the Bamboozle Festival in May 2011, knowing Moore was in the crowd (the controversy only boosted the site's traffic, and Moore's Twitter followers grew from 12,000 to 29,000 in a month). Still, many bands self-submit photos to Is Anyone Up? in order to generate more publicity, or aren't particularly bothered when others submit them. "It was worth it," Jordan Hollywood-Oman, drummer for the screamo band A Beautiful Nightmare, told The Daily Beast. "My personal status and the band's status actually skyrocketed."

Because his site, by his own admission, ruins lives and costs victims their jobs, Moore has become one of the most reviled men on the Internet—a status he seems to relish. One of the site's regular features is titled "Daily Hate," where Moore posts complaints from subjects who've appeared on the site. Last year, an angry woman whose picture appeared on Is Anyone Up? confronted Moore at a house party, lodging a Bic pen in his left shoulder and leaving a nasty-looking wound. Moore posted the gruesome aftermath and wrote about the incident, resulting in his biggest traffic day yet—that is, until he appeared on Anderson Cooper's talk show in November, when he was confronted by two of his victims.

The biggest shot fired at Moore came from Facebook, which sent him a three-page cease-and-desist letter in December ordering him to remove all Facebook-related screengrabs from the site. Facebook claims Moore's actions are illegal and in violation of the site's terms of service, which spell out that users' information cannot be published without their consent. Facebook also accuses Moore of harassing its users, and has disabled his personal account.

The way Moore sees it, the Facebook flap is simply more publicity for his site. "I just thought, 'Cha-ching! You fucking idiots,'" Moore says with a cackle. "In my opinion, I've already won the battle, and that's why I haven't heard anything from them since. Then, I sent them a picture of my dick on top of it." Moore continues, "[Mark Zuckerberg] had Facemash, where he compared women to farm animals. We're in the same game, basically, and it's kind of weird he'd go after me." Facebook did not respond to multiple requests for comment for this story.

High Times in America

The Great Deformer

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Exhibit 2

-17-

Moore compares his job to a coroner's: "At first he thinks it's weird, but then he does it every day of his life and it's just another dead body."

Moore runs pornography ads on the website to cover the \$12,000 monthly server fees, and he says he makes around \$3,000 a month off merchandise. That includes T-shirts bearing his infamous slogan #NBHNC, which stands for No Butthole, No Care, reflecting Moore's penchant for the most revealing of photos. "Girls take pictures, but as a pervert I want to see what's hidden," he explains. His cult-like fans sometimes swap nude pictures for the T-shirts in a Girls Gone Wild-esque transaction, and some female fans have gone so far as to get tattoos of the #NBHNC slogan. Moore says he puts all profits back into the site.

Moore claims he works 19 hours a day, five days a week managing the site, and he also employs a team of six people, including two age-verification specialists to ensure that everyone pictured is 18 years or older. Moore says the site only uses original photos with EXIF data, which tells, among other things, when the photo was taken. "I compare that with your date of birth" to determine if the subject is indeed over 18, Moore says. He says that there have been instances when people who appeared on the site turned out to be under age, and that those posts were removed.

While many people whose pictures have appeared on the site have threatened Moore with legal action, no one has yet filed a lawsuit against him. Part of the problem, it seems, is that people don't want to draw more attention to the incident by pursuing a lawsuit, and many of the people posted on Moore's site are young and don't possess the resources to sue. "It takes you \$50,000 to get me into court, and people who work at Starbucks don't make that kind of money," brags Moore.

Evan Brown is an attorney specializing in technology and intellectual property who has represented two clients who've had their photos posted on Is Anyone Up? The attorney sees two areas where the site could run into legal problems: (1) copyright, and (2) harassment or infliction of emotional distress. Since most of the images on the site are self-portraits, Brown says the people in those photos own the copyright. And it's safe to assume that most of the photos were published without the copyright holder's permission. The victim could, according to Brown, sue whomever submitted the photos to Is Anyone Up? and most likely be successful.

Still, it's uncertain whether the site itself would be liable, given that other sites that host user-generated content, like YouTube, are protected by federal law from some copyright suits under the Digital Millennium Copyright Act (DMCA), provided the sites follow the requirements of the DMCA.

As for the issue of harassment, federal law protect website operators from lawsuits over user-submitted content. For example: websites aren't liable for statements made by users in its comments section. But there is an exception to the rule: "Courts are not willing to extend that protection to websites if they build the site to become a developer of the content," says Brown. "Hunter Moore has not concealed the fact that he enjoys ruining lives, and the site makes it a requirement that the victim's name and information about his or her social media presence [usually Facebook page] be disclosed when pics are being submitted. The site is a machine specially built for reputation-ruining."

Moore has also been accused of hacking by several people upset to find their photos on his site. "I've talked to 25 victims within a 14-day period, and about 40 percent of them were hacked," says Charlotte Laws, an investigator who helped Facebook deactivate Moore's page. "Additionally, 12 percent of them were someone else's head and a different person's nude body."

One female in her early 20s who appeared on Moore's site claims she was hacked. "I was asked a few questions by a random promoter I was 'friends' with on Facebook—but didn't know personally—about what my old Hotmail address

Exhibit 2

-18-

was. He then asked me random questions about myself that, in retrospect, could be my 'security questions,' and within a second of me talking to this promoter-guy. I got locked out of my Gmail and got locked out of my Hotmail because the passwords were changed." The young woman, who requested anonymity to avoid being embarrassed by the posting, claims the nude photos that ended up on the site were only sent to a single friend, who swore to her that she didn't submit them to Is Anyone Up?

"I don't hack," Moore says. "I'm sure there have been times that people have been hacked and ended up on the site, but as far as Hunter Moore doing the hacking, that hasn't happened."

Hunter Moore isn't the most imposing of figures. Grungy yet handsome, 6'2" but slim, he sports a black "fauxhawk" hairdo that belies his child-like visage. His arms are covered in tattoos, and he speaks with a bit of a lisp—a remnant, he says, of his California upbringing.

He was born in Woodland, California—a small, predominantly Hispanic town 15 miles outside of Sacramento—and attended Woodland Christian School, which describes itself as a place where, "With Christ as our example, students will learn the power of serving others." According to Moore, while his mother was "rad," his military father punished him for the simplest of transgressions. (He claims his parents are actually fans of Is Anyone Up?). Moore was eventually expelled from Woodland Christian for, he says, acting up in class, and he briefly attended public school before dropping out at 13. "I just didn't think I needed school," Moore says, adding, "Now I do because I'm kind of retarded."

Despite his lack of formal education, Moore has a keen business mind and is very Internet-savvy. He started creating businesses at 13, including a lifestyle website and a business called WHS Party Scene, which was a bot for AOL Instant Messenger users that showed what parties were happening in town. He also taught himself Photoshop through a tutorial, and became actively engaged in social networking in order to meet girls.

Moore says that when he was 15, he had his heart broken by his first love, a girl named Rachel, and he traces much of what happened in his life since to that seminal moment. "The only way to get to a point where you have no feelings, you have to have your heart ripped out and shit on," Moore says. "I hate to use the term 'heartless,' but you have to have something traumatic happen to get there."

Several years later, Moore recalls, he was attacked by a fellow employee while working the cash register at a retail store. "A guy at work hired me thinking I was gay and put his hands down my pants in front of a customer while I was ringing them up at a retail store," Moore says. "I hit him in the nose and then he threw me against the wall—he was about 300 pounds—and dragged me across the floor. I sued the company." He pauses. "That's why lawyers don't really intimidate me, because I've been through the wringer a few times."

With his settlement money from the sexual harassment suit, which Moore claims totaled \$300,000, he bounced around quite a bit, first living in Williamsburg, Brooklyn, then moving back to California and serving as a manager for a band called the Millionaires. He partied and lived the life of a rock star along the way. After spending some time in Australia with a girl he met on MySpace, he arrived back in New York City in 2009 with \$150 in his pocket. At this point, Moore claims he was desperate, and engaged in "horrible shit" to pay his bills. When asked if he prostituted himself, he replies, "Basically ... I never let dudes bang me out or anything, but it's stuff you wouldn't tell people."

Moore got a steady job "doing hair at a fetish company," and by his estimation was pulling down around \$60,000 a year. Then, he says, he met a porn star who introduced him to the world of sex parties. He soon began hosting sex parties around New York, catering to middle-aged white businessmen. Moore would advertise the parties on swinger websites, and claims to have earned \$100,000 in the first six months.

After an intervention of sorts from his sister, who he says is a missionary, Moore decided to return to the web. He purchased the domain for IsAnyoneUp.com—a status he used to post to his Facebook while suffering from insomnia—and initially intended to use it to review nightlife venues. Then things took a sharp turn. "I was having sex with this girl who was getting engaged to a member of an emo band, and everyone wanted to see her naked," Moore says. A friend, who worked for Google at the time, encouraged Moore to post the young woman's

Exhibit 2 -19-

photo to Is Anyone Up? so they could all see it. "That was the very first picture," Moore says. A couple of online forums caught wind of what Moore was doing, and a few days later when he checked the stats he saw that his site had received 14,000 uniques in a single day.

Since then, Moore has managed to burn most of his bridges. But he still has his best friend, Carlos Jacome, a red-haired, tattoo-covered scene kid of Colombian descent who accompanies him on most of his stops. And he says he has had a girlfriend for three and a half years back in California, though they share "an emotional relationship and not a physical one."

Moore says he feels very little sympathy for those unfortunate enough to wind up on his website. He compares his job to a coroner cutting up corpses. "At first he thinks it's weird, but then he does it every day of his life and it's just another dead body," Moore says.

By 1:30 a.m., the scene at Webster Hall is picking up steam. Moore is whispering into the ear of a tall, red-headed girl with a pierced nose and a lopsided Skrillex haircut as the chorus to "Internet Friends," a sinister electro tune by the Australian dubstep duo Knife Party, blares in the background: "You blocked me on Facebook/And now you're going to die."

"We're best friends with him," says a petite blonde girl, pointing toward Moore. She is wearing a skintight, low-cut red dress exposing some ample back art, and doesn't look a day over 16.

After a brief trip to the bathroom, I decide to head for the exit. On my way to the door, I spot the four young women from earlier in the night. They are all grinding against one another, forming some sort of Human Centipede-like structure. As the two middle girls lean in and kiss, Moore approaches the group, grinning from ear to ear.

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Marlow Stern is the assistant culture editor of *Newsweek* and *The Daily Beast* and holds a master's degree from the Columbia University Graduate School of Journalism. He has served in the editorial department of *Blender* magazine, and as an editor at *Amplifier Magazine* and *Manhattan Movie Magazine*.

For inquiries, please contact The Daily Beast at editorial@thedailybeast.com.

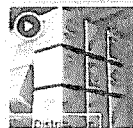
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Exhibit 2 -20-

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Exhibit 2

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EXHIBIT B

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linda@lindamcaleer.com

4 Attorney for Plaintiff
5
6
7
8

9 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10 BRANDI PASSANTE

11 Plaintiffs,

Case No.: _____

12 vs.

13 HUNTER MOORE, AN INDIVIDUAL, AND
14 DOES 1-25,

15 Defendants.

DECLARATION OF BRANDI PASSANTE
IN SUPPORT OF PLAINTIFF'S EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER; ORDER TO
SHOW CAUSE RE: PRELIMINARY
INJUNCTION; AND ORDER OF
IMPOUNDMENT

16 DECLARATION OF BRANDI PASSANTE

17 I, Brandi Passante, hereby declare under the penalties of perjury under the laws of
18 the United States of America, that the following is true and correct:

19 1. I have personal knowledge of the matters stated herein, and if called upon to testify I
20 could and would do so competently.

21 2. I am a regular on the A&E Network's show *Storage Wars*. As a result of my
22 participation in the show, I have achieved notoriety and become a worldwide celebrity.
23
24

1 3. My name and likeness are used in worldwide promotion of the show, on marketing
2 materials, and on promotional items, such as mugs, t-shirts, hats, etc., available through A&E's
3 distribution channels, and A&E pays me for that privilege.

4 4. I have a commercial interest in my identity and make an effort to protect that interest.

5 5. Prior to October 14, 2012 I had never heard of Hunter Moore.

6 6. On October 14, 2012 I began to receive unsolicited posts on my Twitter account
7 stating "Can't wait to see more of the video," "Love the pics," and similar references to images
8 posted at <is-anyone-up.tumblr.com>. At the time I had no idea to what videos or images the
9 posts referred.

10 7. I looked at the referenced website and was horrified, hurt, and ashamed, to see images
11 of someone portraying me in a pornographic video and associated images. True and correct
12 copies of the images are attached as Exhibit 1.

13 8. I never made any such video and immediately notified my attorney of the disparaging
14 and defamatory images and allegations.

15 9. I have never had any contact with Mr. Moore and did not send him sexual images.

16 10. Since learning of these posts, and the subsequent posting of the full video on a
17 separate website I have been extremely upset and agitated, losing sleep, feeling ill, and I am
18 experiencing a great deal of anxiety over the exposure to my children, their friends, and their
19 friends' families.

20 Executed October 18, 2012 in Orange County, California.

21

22

23

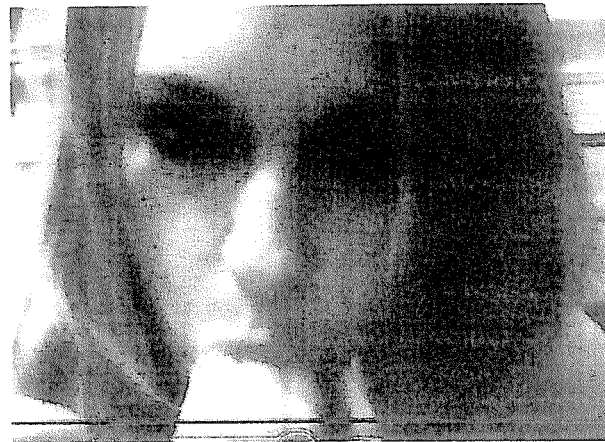
24



Brandi Passante



Merch
My Music
Twitter
Submit
ASK
Random
Archive



anyone want the video of orange from storage wars filming herself to use
source: twitter.com

THEME by MAX DAVIS

Exhibit 1

-24-

<http://is-anyone-up.tumblr.com/>

10/23/2012

EXHIBIT C

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4 Attorney for Plaintiff
5
6
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 BRANDI PASSANTE

11 Plaintiff,

Case No.: _____

12 vs.

13 HUNTER MOORE, AN INDIVIDUAL, AND
14 DOES 1-25,

15 Defendants.

DECLARATION OF STEPHEN ANDREW
KENNEDY IN SUPPORT OF PLAINTIFF'S
EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER;
ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION; AND
ORDER OF IMPOUNDMENT

16 DECLARATION OF STEPHEN ANDREW KENNEDY

17 I, Stephen Andrew Kennedy, hereby declare under the penalties of perjury under
18 the laws of the United States of America, that the following is true and correct:

19 1. I have personal knowledge of the matters stated herein, and if called upon to testify I
20 could and would do so competently.

21 2. I am the founding attorney and President of Kennedy Law, P.C. We have offices in
22 Dallas, Texas and in Los Angeles, California.

23 3. In connection with a request for legal advice, the substance of which is privileged, I
24 accessed the webpage purporting to show a video of Brandi Passante to determine the content

1 and evaluate possible legal claims. To do so, I directed my internet browser to
2 <http://straight.fleshbot.com/5939976/is-this-the-brandi-passante-masturbation-tape>.

3 4. The webpage displays an image that purports to be Ms. Passante with a link to a
4 video. I clicked on the link for the video. The video began with a still image of Ms. Passante
5 and then a pornographic video. Within a few seconds of the commencement of the video, my
6 computer's antivirus software displayed a message that the video contained a harmful virus. The
7 software is Kaspersky PURE 2.0 which, based on my research, is the best protection currently
8 available to protect a computer from potentially harmful viruses and malware.

9 5. Based on the message generated by Kaspersky, I closed the browser window. I then
10 activated the Kaspersky virus scan to determine whether any virus or malware had been
11 downloaded to my computer. The Kaspersky software generated a message that it had detected
12 and quarantined a "trojan horse" virus.

13 6. I have used the Kaspersky software on my computer for months. It is set to scan the
14 computer daily. Prior to viewing the video at issue, the Kaspersky software had detected no
15 threats to my computer. After viewing the video for a brief period of time – less than 30 seconds
16 – a virus was detected and downloaded to my computer. Kaspersky eliminated the threat.

17 7. A computer that is not protected by antivirus software is vulnerable to the virus
18 attached to the video. It is common knowledge that a "Trojan horse" can make the individual's
19 private data on the computer at risk and otherwise damage the computer.

20 Executed October 24, 2012 in Dallas County, Texas.

21
22 
23 Stephen Andrew Kennedy
24

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3 7317 El Cajon Blvd, Suite 204A
4 La Mesa, CA 91942
5 T 619-516-1601 F 866-635-1485
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7
8 Attorney for Plaintiff

9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 BRANDI PASSANTE

13 Plaintiffs,

Case No.: _____

14 vs.

15 HUNTER MOORE, AN INDIVIDUAL, AND
16 DOES 1-25,

17 Defendants.

DECLARATION OF LINDA S. McALEER
IN SUPPORT OF PLAINTIFF'S *EX PARTE*
MOTION FOR TEMPORARY
RESTRAINING ORDER; ORDER TO
SHOW CAUSE RE: PRELIMINARY
INJUNCTION, AND ORDER OF
IMPOUNDMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT

18 DECLARATION OF LINDA S. McALEER

19 I, Linda S. McAleer, hereby declare under the penalties of perjury under the laws of the
20 United States of America, that the following is true and correct:

21 1. I am an attorney duly licensed to practice law before this Court. I am counsel of
22 record for Plaintiff Brandi Passante. I submit this declaration in support of Plaintiffs' Ex Parte
23 Application for a Temporary Restraining Order, Order to Show Cause Re: Preliminary
24 Injunction and Order of Impoundment. I have personal knowledge of the matters set forth in this

1 declaration, and if called upon to testify as a witness, I could and would testify competently to
2 such matters.

3 2. Pursuant to Local Rule 7-19, I and my firm have attempted to identify whether
4 Defendant has legal counsel and to notify Defendant personally of Plaintiff's *Ex Parte*
5 Application for Temporary Restraining Order and Impoundment.

6 3. On or about October 15, 2012 my assistant and I conducted Google searches for
7 contact information for Defendant Moore. During our searches we uncovered statements that
8 Defendant Moore was represented by Attorney Reza Sina of Los Angeles, California.

9 4. I instructed my assistant to contact Attorney Sina's firm to confirm representation.

10 5. I am informed and believe that Attorney Sina's office stated they no longer represent
11 Mr. Moore.

12 6. Unable to obtain a physical address for Defendant Moore I hired a private
13 investigator who located a P.O. Box address for Mr. Moore in Heromosa Beach, California and a
14 phone number.

15 7. On or about October 18, 2012 my client, Ms. Passante, was contacted by Charlotte
16 Voss who has dealt with Mr. Moore in the past. I contacted her to discuss her interest in Ms.
17 Passante's matter and she provided me with the last known address she had for Mr. Moore,
18 located in Woodland, California.

19 8. I instructed my assistant to send cease and desist letters to Mr. Moore via United
20 States Postal Service first class mail and certified mail return receipt requested to both the
21 Hermosa Beach and the Woodland addresses.

22 9. I am informed and believe that the letters were sent out on October 22, 2012.

23 10. The cease and desist letters informed Mr. Moore that Plaintiff Passante would be pursuing all
24 available legal remedies concurrent with the issuance of the cease and desist letters.

1 11. On or about October 24, 2012 at approximately 10:00 a.m. I attempted to contact Mr. Moore
2 via telephone at the phone number located by the private investigator. Upon dialing the number I received
3 a pre-recorded message informing callers that the number had been disconnected or was no longer in
4 service.

5 12. Unable to verify legal representation or reach Moore via telephone I searched for an email
6 address and located his bookhuntermoore@gmail.com email address on his Twitter page.

7 13. At approximately 11:41 a.m., on October 24th, 2012 I sent an email to Defendant
8 Moore, attaching the cease and desist letters. In the body of the email I informed Defendant that
9 Plaintiff would be filing her complaint and Application for Temporary Restraining Order, Order
10 to Show Cause Re: Preliminary Injunction, and Order for Impoundment on October 25, 2012 in
11 the United States Federal District Court, Central District, Southern Division in Santa Ana,
12 California. A true and correct copy of the email is attached hereto as Exhibit 1.

13 14. I requested confirmation of delivery of the email and confirmation that the email had
14 been read.

15 15. I received confirmation of delivery, but did not receive a confirmation that the email
16 was read. A true and correct copy of the confirmation of delivery email is attached hereto as
17 Exhibit 2.

18 16. Despite our efforts we have been unable to contact Mr. Moore and inform him of the
19 hearing on Plaintiff's *Ex Parte* Application for a Temporary Restraining Order and other Orders.

20 17. At 10:23 a.m. on October 25, 2012 I received an email from Plaintiff Passante's assistant
21 informing me that Mr. Moore had "tweeted" Ms. Passante via her Twitter account saying "thank you for
22 the cease and desist @Brandipassante <3." The time stamp on the tweet indicates it was sent at 2:26 p.m.
23 on October 24, 2012. A true and correct copy of the screen shot emailed to me is attached hereto as
24 Exhibit 3.

1 18. Because of Defendant's direct contact with Plaintiff we decided to delay filing by a day in
2 order to investigate Mr. Moore's activities after receiving the cease and desist letter.

3 19. I searched Defendant Moore's Twitter account and found a link to "recent images" that
4 contained the same images which had been previously posted on Defendant's Tumblr account and are the
5 subject of Plaintiff's Complaint and Application for Temporary Restraining Order and Impoundment. A
6 true and correct copy of the image posted on Twitter is attached as Exhibit 4.

7 20. Under the image was a link titled "details." Upon clicking the link I was taken to another
8 Twitter page that showed the image and indicated it was posted 21 hours prior, meaning it was posted at
9 approximately 6:00 p.m. on October 24, 2012, after Defendant had received the cease and desist letter and
10 tweeted "thanks" to Plaintiff. A true and correct copy is attached hereto as Exhibit 5.

11 21. The Twitter image also linked to a yfrog page which is associated with Twitter. This page
12 indicated that the image was posted at 6:51 p.m. on October 24, 2012, again after Defendant
13 acknowledged receipt of the cease and desist letter to Plaintiff. *see Exhibit 5*

14 22. Because we delayed filing of the Complaint and Application for Temporary Restraining
15 Order and Impoundment, I again sent an email notice to Mr. Moore at 5:03 p.m. on October 25, 2012 and
16 requested both a confirmation of receipt and confirmation that the email had been read. A true and correct
17 copy of the email is attached hereto as Exhibit 6.

18 23. I received confirmation of delivery, but did not receive a confirmation that the email
19 was read. A true and correct copy of the confirmation of delivery email is attached hereto as
20 Exhibit 7.

21 24. To date I have not received confirmation of delivery of the hard copy cease and desist
22 letters that were mailed to Defendant via USPS, or read receipts for the emails that were sent to
23 bookhuntermoore@gmail.com.

24 Executed October 25, 2012 in San Diego County, California.


Linda S. McAleer

EXHIBIT 1

Linda McAleer

From: Linda McAleer
Sent: Wednesday, October 24, 2012 11:41 AM
To: 'bookhuntermoore@gmail.com'
Subject: Notice
Attachments: Moore cease and desist.pdf

Importance: High

Dear Mr. Moore,

Please take notice that in addition to the attached cease and desist letter, my client is filing a civil complaint and seeking a temporary restraining order in Federal Court, Central District of California, Southern Division, located in Orange County, CA, tomorrow morning. If you are represented by counsel please have your attorney contact me immediately. If not, please respond to me personally to address this matter.

Sincerely,

Linda McAleer

Linda S. McAleer, (FKA Klinger) Esq.
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www.SanDiegoBankruptcyCounsel.com

This email and any attachments may contain information that is confidential and/or protected by the attorney-client privilege and/or attorney work product doctrine. If you have received this email in error, please contact the sender immediately and destroy all contents of this transmission.

EXHIBIT 2

Linda McAleer

From: Microsoft Outlook
To: 'bookhuntermoore@gmail.com'
Sent: Wednesday, October 24, 2012 11:42 AM
Subject: Relayed: Notice

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

'bookhuntermoore@gmail.com' (bookhuntermoore@gmail.com) <<mailto:bookhuntermoore@gmail.com>>

Subject: Notice

EXHIBIT 3

@brandipassante

Tweet



Hunter Moore

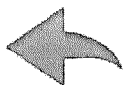
@Huntermoore



thank you for the cease and desist
Brandipassante <3

10/24/12. 2:26 PM

18 RETWEETS 16 FAVORITES



Adrian Kenny @kennyadr

@Huntermoore @Brandipassante

WHERE'S THE VIDEO

Exhibit 3

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EXHIBIT 4

Twitter.com makes heavy use of browser cookies
Recent images by @Huntermoore
Please enable cookies in your browser preferences before signing in.



Welcome to Twitter.

Find out what's happening, right now, with the people and organizations you care about.

Username or email

Password

☐ Remember me [Forgot password?](#)

New to Twitter? Sign up

Full name

Email

Password

- [About](#)
- [Help](#)
- [Blog](#)
- [Mobile](#)
- [Status](#)
- [Jobs](#)
- [Terms](#)
- [Privacy](#)
- [Advertisers](#)
- [Businesses](#)
- [Media](#)
- [Developers](#)
- [Resources](#)
- [Directory](#)
- © 2012 Twitter

Exhibit 4

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EXHIBIT 5

Find people

Upload



Huntermoore 21 hours 27 mins ago
@Brandipassante <3333 http://twitter.vfrog.com/kezo5xkj

Reply Tweet Favorite

more from Huntermoore >>



Older



Links to share this Photo

Link: <http://twitter.vfrog.com/kezo5xkj>

Direct: <http://a.vfrog.com/img734/2301/zo>

► More sharing options

► Details

Tag This Photo

Like 0

Comment on this Photo

Share

Views: 354

write your comment here...

Comment

Report Abuse

yfrog

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Exhibit 5

-35-



YFrog

- 14 Retweets
- 42 Favorites



6:51 PM - 24 Oct 12 · [Embed this Tweet](#)



21h [Hunter Moore@Huntermoore](#)

[.@Brandipassante <3333](#) <http://vfrog.com/kezo5xkj>

[View photo](#)[Hide photo](#)

- [Reply](#)
- [RetweetedRetweet](#)
- [Delete](#)
- [FavoritedFavorite](#)

Don't miss any updates from Hunter Moore Join Twitter today and follow what interests you!

Full name
Email
Password

[Sign up](#)

Exhibit 5

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EXHIBIT 6

Linda McAleer

From: Linda McAleer
Sent: Thursday, October 25, 2012 5:07 PM
To: 'bookhuntermoore@gmail.com'
Subject: Revised Notice

Importance: High

Dear Mr. Moore,

Please take notice that we have moved our date of filing Ms. Passante's complaint and Ex Parte Application for Temporary Restraining Order to tomorrow. I will be at the Federal Court, Central District of California, Southern Division, located at 411 West Fourth Street, Room 1053, Santa Ana, CA 92701-4516 in Orange County, CA, tomorrow morning. If you are represented by counsel please have your attorney contact me immediately. If not, please respond to me personally to address this matter.

Sincerely,

Linda S. McAleer

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EXHIBIT 7

Linda McAleer

From: Microsoft Outlook
To: 'bookhuntermoore@gmail.com'
Sent: Thursday, October 25, 2012 5:07 PM
Subject: Relayed: Revised Notice

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

'bookhuntermoore@gmail.com' (bookhuntermoore@gmail.com) <<mailto:bookhuntermoore@gmail.com>>

Subject: Revised Notice

Exhibit 7